

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

MELANIE GARRETT,

Plaintiff,

v.

CIVIL ACTION NO. 2:12-cv-09075

ETHICON, INC., et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending are (1) Defendants’ Motion to Dismiss with Prejudice or for Other Relief, filed on June 22, 2017 [ECF No. 19]; and (2) Plaintiff’s Response in Opposition to Defendant’s Motion to Dismiss and Plaintiff’s Motion to Remove from Wave 6, filed on July 6, 2017 [ECF No. 22]. In their Motion, defendants Ethicon, Inc., Ethicon LLC and Johnson & Johnson (collectively “Ethicon”) seek dismissal of plaintiff’s case with prejudice based on plaintiff’s failure to timely serve a Plaintiff Fact Sheet (“PFS”) in violation of Pretrial Order # 251. [ECF No. 19]. In response, plaintiff’s counsel opposes the Motion, indicating that he has repeatedly attempted to communicate with plaintiff with no response. Plaintiff’s counsel requests that plaintiff be removed from Wave 6 because of these communication difficulties. [ECF No. 22]. Ethicon opposes the request for removal from Wave 6. [ECF No. 23].

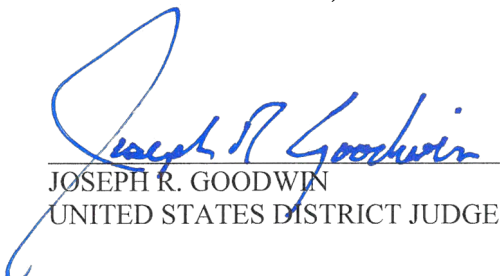
The court finds, pursuant to Rules 16 and 37 of the Federal Rules of Civil Procedure and after weighing the factors identified in *Wilson v. Volkswagen of Am.*,

Inc., 561 F.2d 494, 503-06 (4th Cir. 1977), that this case should be dismissed without prejudice for plaintiff's failure to comply with discovery deadlines including the filing of a PFS in compliance with the court's previous pretrial order.

Therefore, the court **ORDERS** that the motion to dismiss [ECF No. 19] is **GRANTED in part** to the extent Ethicon seeks dismissal and **DENIED in part insofar as Ethicon seeks dismissal with prejudice**. The court further **ORDERS** that Plaintiff's Motion to Remove from Wave 6 [ECF No. 22] is **DENIED**. The court **ORDERS** that Ethicon, Inc., Ethicon LLC and Johnson & Johnson are dismissed without prejudice. *No other defendants remain, and the case is stricken from the docket and closed.* All other pending motions are **DENIED as moot**.

The court **DIRECTS** the Clerk to send a copy of this order to counsel of record and any unrepresented party.

ENTER: October 15, 2019


JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE